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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JASPREET KAUR HAYER,

Defendant and Appellant.

C064837

(Super. Ct. No.
06F01163)

In February 2006 Sacramento Police officers ran a license plate check on a car being driven by defendant Jaspreet Kaur Hayer.¹ They learned that the plate had been reported stolen. After stopping defendant and checking the vehicle identification number, the officers determined that the car, too, had been stolen. When later questioned, defendant admitted that she had borrowed the car knowing it was stolen.

¹ Because the matter was resolved by plea, our statement of facts is taken from the probation officer's report.

Defendant pled no contest to driving a vehicle with knowledge that it was stolen. (Veh. Code, § 10851, subd. (a).) Imposition of sentence was suspended and defendant was placed on probation on conditions including 90 days of incarceration and payment of a \$200 restitution fine. (Pen. Code, § 1202.4.)²

In March 2007 defendant admitted violating her probation in a manner not disclosed on this record. Probation was reinstated under the original terms and conditions plus an additional 120 days of incarceration.

In June 2009 defendant admitted a second probation violation and probation was again reinstated with no additional incarceration.

In February 2010 defendant admitted that she violated her probation in that she had violated Health and Safety Code section 11377, subdivision (a). Probation was terminated and defendant was sentenced to state prison for the stipulated low term of 16 months. The court effectively reimposed the \$200 restitution fine and imposed a \$200 restitution fine stayed pending revocation of parole. (Pen. Code, § 1202.45.)

For her most recent presentence incarceration, defendant was awarded 11 days' custody credit and 10 days' conduct credit in accordance with the recent amendments to section 4019. However, her request to apply those amendments retroactively to her 2006 and 2007 incarcerations was denied. Thus, for 2006 she

² All further undesignated statutory references are to the Penal Code.

was awarded 60 days' custody credit and 30 days' conduct credit. For 2007 she was awarded 80 days' custody credit and 40 days' conduct credit. Defendant's appellate counsel raised this issue by motion in the trial court, evidently without success.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Pursuant to this court's miscellaneous order No. 2010-002, filed March 16, 2010, we deem defendant to have raised the issue of whether the recent amendments to section 4019, effective January 25, 2010, entitle her to additional presentence credit for her 2006 and 2007 incarcerations. We conclude that the amendments do apply to all appeals pending as of January 25, 2010.³ (See *In re Estrada* (1965) 63 Cal.2d 740, 745 [amendment

³ The California Supreme Court has granted review to resolve a split in authority over whether the January 2010 amendments to section 4019 apply to pending appeals. (*People v. Brown* (2010) 182 Cal.App.4th 1354, review granted June 9, 2010, S181963 [giving retroactive effect to amendments]; accord, *People v. Pelayo* (2010) 184 Cal.App.4th 481, review granted July 21, 2010, S183552; *People v. Landon* (2010) 183 Cal.App.4th 1096, review granted June 23, 2010, S182808; *People v. House* (2010) 183 Cal.App.4th 1049, review granted June 23, 2010, S182813; contra, *People v. Hopkins* (2010) 184 Cal.App.4th 615, review granted July 28, 2010, S183724; *People v. Otubuah* (2010)

to statute lessening punishment for crime applies "to acts committed before its passage provided the judgment convicting the defendant of the act is not final"; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393 [applying the rule of *Estrada* to amendment allowing award of custody credits]; *People v. Doganiere* (1978) 86 Cal.App.3d 237 [applying *Estrada* to amendment involving conduct credits].) Defendant is not among the prisoners excepted from the additional accrual of credit. (§ 4019, subds. (b)(2), (c)(2) [as amended by Stats. 2009, 3d Ex. Sess. 2009-2010, ch. 28, § 50], § 2933 [as amended by Stats. 2010, ch. 426, § 1, eff. Sept. 28, 2010].) Consequently, defendant, having served a total of 140 days of presentence custody in 2006 and 2007, now is entitled to 140 days' conduct credit for those periods. We shall modify the judgment to include those days in her total credit award.

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is modified to award defendant 151 days of custody credit and 150 days of conduct credit. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a

184 Cal.App.4th 422, review granted July 21, 2010, S184314; *People v. Rodriguez* (2010) 182 Cal.App.4th 535, review granted June 9, 2010, S181808.)

certified copy thereof to the Department of Corrections and
Rehabilitation.

RAYE, J.

We concur:

NICHOLSON, Acting P. J.

BUTZ, J.